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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 345

JOHN P. HAMRICK,
Appellant

versus

STATE OF ALABAMA,
Appellee

ON APPEAL FROM THE SUPREME COURT
OF ALABAMA

MOTION TO DISMISS OR AFFIRM

MacDONALD GALLION
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Of Counsel:
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No.

JOHN [illegible],

Appellant,

vs.

STATE OF ALABAMA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF ALABAMA

MOTION TO DISMISS OR AFFIRM

The appellee moves this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Alabama on the ground that the question presented is so insubstantial as not to need further argument.

ARGUMENT

The appellee wishes to make one point by means of this motion and that is not, as anticipated by the appellant, that the decision of the Supreme Court of Alabama rests on non-federal grounds. The Supreme Court of Alabama has not evaded the issue presented by the appeal to it but met the appellant's proposition forthrightly and bottomed its opinion on this Court's holding in *Minnesota v. Probate Court*, 309 U. S. 270, 60 S. Ct. 523, 84 L. Ed. 744. The appellee simply states that *Minnesota*

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STATUTE

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STATUTE

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IN THE

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OCTOBER TERM, 1967

No. _____

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versus

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ON APPEAL FROM THE SUPREME COURT OF ALABAMA

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v. Probate Court, supra, has determined the question presented and that there is no longer a substantial federal question involved.

This Court stated in *Minnesota v. Probate Court*, supra, ". . . For the purpose of deciding the constitutional questions appellant raises we must take the statute as though it read precisely as the highest court of the State has interpreted it. . . . (Citations omitted.)" Therefore, in the instant case, we must look to the interpretation of the Alabama statute given by the Supreme Court of Alabama.

The appellant's main argument throughout these proceedings has been that the Alabama statute does not provide for those requirements of due process which are particularly set out in *Specht v. Patterson*, ____ U. S. ____, 87 S. Ct. ____, 18 L. Ed. 2d 326. The Alabama Supreme Court pointed out that the statute requires a hearing before a determination is made by the trial court as to whether one is a criminal sexual psychopath or not, and ". . . this 'hearing' is a judicial hearing surrounded by all the requirements of due process."

It is a fact that the appellant has not yet been given a hearing but this is because he applied for the writ of habeas corpus before that stage in the proceedings was reached. Therefore, all of the alleged denials of due process with regard to the hearing are merely surmise and conjecture. It has been the appellee's position throughout that the appellant is entitled to (1) the right to be present at the hearing with counsel; (2) the right to an opportunity to be heard; (3) the right to be confronted with witnesses; (4) the right to cross-examination; (5) the right to offer evidence in his behalf; and (6) the right to have adequate findings made upon which appeal can be taken.

supra, however, this is not an analogous case as there was no provision for a hearing in the Colorado statute, rather it was merely a sentencing method. The statement by Mr. Justice Merrill in the opinion now before this Court to the effect that the Alabama statute is quite like the Minnesota statute and quite unlike the Colorado statute is absolutely correct.

We submit that this statement by this Court in *Minnesota v. Probate Court*, supra, "This construction of the statute destroys the contention that it is too vague and indefinite to constitute valid legislation." is directly applicable to this case and that the judgment of the Supreme Court of Alabama is without eorror.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this appeal should be dismissed or that the decision of the Supreme Court of Alabama should be affirmed.

Respectfully submitted,

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Assistant Attorney General
of Alabama

Attorneys for Appellee

Of Counsel:

Walter S. Turner
Assistant Attorney General
of Alabama

CERTIFICATE

I, Robert P. Bradley, one of the attorneys for appellee, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 17th day of August 1967, I served a copy of the foregoing motion to dismiss or affirm, upon Honorable William B. McCollough, Jr., attorney for appellant, 910 Frank Nelson Building, Birmingham, Alabama 35203, by depositing the same in the United States mail, first class postage prepaid, and properly addressed to him at the address given.

Robert P. Bradley

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

HAMRICK *v.* ALABAMA.

APPEAL FROM THE SUPREME COURT OF ALABAMA.

No. 345. Decided October 9, 1967.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question.